FILE COPY

No. 448

In the Supreme Court of the United States

OCTOBER TERM, 1932

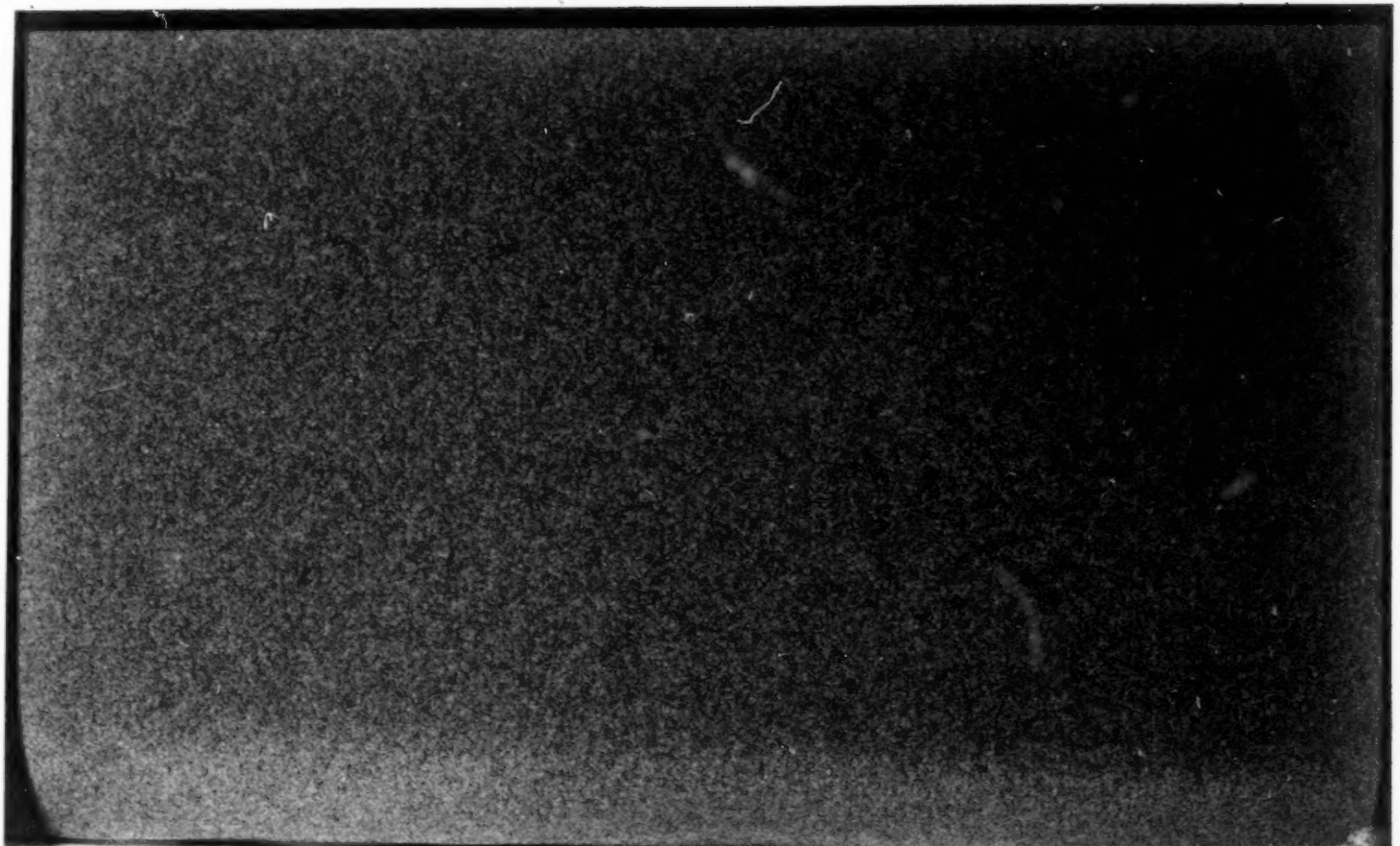
PETROLEUM EXPLORATION, PETITIONER

v.

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT



INDEX

	Page
Opinions below	1
Jurisdiction	1
Discussion	2

CITATION

United States v. *Dakota-Montana Oil Company*, No. 434, October Term, 1932	2

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 448

PETROLEUM EXPLORATION, PETITIONER

v.

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 29–33) is reported in 23 B. T. A. 890. The opinion of the Circuit Court of Appeals (R. 42) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered October 8, 1932. (R. 51.) The petition for a writ of certiorari was filed October 12.

1932. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

DISCUSSION

The question presented in this case, whether capitalized expenditures by the petitioner for drilling costs in connection with oil wells are to be returned to the taxpayer through depletion or depreciation, under the applicable Revenue Act, is one of the questions involved in *United States, Petitioner,* v. *Dakota-Montana Oil Company,* No. 434, October Term, 1932, now pending on petition for certiorari. In its petition for certiorari in that case the Government relied on a conflict between the decision of the Court of Claims therein and the decision of the Circuit Court of Appeals in this case.

The Circuit Court of Appeals held that, under Treasury Regulations which had received legislative approval, such costs when capitalized were returnable only through depletion and expressly refused to follow the decision of the Court of Claims in the *Dakota-Montana Oil Company* case that such capitalized costs were to be returned through depreciation. In its petition for certiorari in the latter case the Government also asserted that the question was one of general importance and that review by this Court to resolve the conflict was necessary. Under these circumstances, we do not oppose the granting of the instant petition.

If the petitions in No. 434 and in this case are granted, we concur in the petitioner's suggestion that this case should be advanced for argument immediately after No. 434.

Respectfully submitted.

THOMAS D. THACHER.
Solicitor General.

OCTOBER, 1932.

U. S. GOVERNMENT PRINTING OFFICE : 1932